124 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Wyoming Interstate Company, Ltd. Docket No. RP08-203-001

ORDER ON REHEARING

(Issued August 29, 2008)

1. On April 30, 2008, Wyoming Interstate Company, Ltd. (WIC) filed a request for rehearing of the Commission's March 31, 2008 order in this proceeding.[1] That order denied WIC's February 19, 2007 request for waiver of its tariff to allow WIC to make a cash-out payment to its customers for over-collection of fuel gas and lost and unaccounted for gas (collectively, FL&U) that occurred between September 1, 2007 and November 30, 2007. For the reasons stated below, we deny WIC's request for rehearing.

I. Background

2. Article 30 of the General Terms and Conditions of WIC's tariff requires WIC to calculate its FL&U reimbursement percentages at least annually and file them with the Commission.[2] These periodic limited rate filings consist of both a projected FL&U retention requirement and an adjustment, or true-up, to the FL&U requirement to account for under- or over-recoveries during prior periods. WIC filed a revision to its FL&U percentages on October 31, 2007, which accounted for the period from September 1, 2006 to August 31, 2007 (2007 Fuel Filing).[3] In that filing, WIC also proposed to make a cash payment for the value of certain over-recovered quantities that would

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[1] *Wyoming Interstate Co., Ltd.*, 122 FERC ¶ 61,299 (2008) (March 31, 2008 Order).

[2] WIC, FERC Gas Tariff, Second Revised Vol. No. 2, Eighth Revised Sheet No. 83.

[3] WIC, October 31, 2007 Filing, Docket No. RP08-47-000.

otherwise have been deferred to offset future FL&U requirements. No party objected to this adjustment, and the Commission accepted WIC's cash-out proposal and its FL&U percentages, effective December 1, 2007.[4]

3. Subsequent to the 2007 Fuel Filing but before the December 1, 2007 effective date of the 2007 Fuel Filing (i.e., during the period September 1, 2007 to November 30, 2007), WIC experienced over-collections of FL&U gas. Specifically, WIC states that it over-recovered the following fuel gas amounts: (1) 93,143 Dth on the mainline; (2) 12,647 Dth on the incremental Echo Springs Lateral system; and (3) 18,275 Dth on the incremental Piceance Lateral system. WIC states that it over-recovered the following lost-and-unaccounted-for gas amounts: (1) 23,631 Dth on the mainline; (2) 63,115 Dth on the incremental Medicine Bow Lateral system; and (3) 4,099 Dth on the incremental Powder River Lateral system.

4. WIC, in the request for waiver, did not seek to make an adjustment as provided for in its tariff, by filing an out-of-cycle adjustment to revise its FL&U percentages. Instead, WIC sought permission to provide its customers with an interim cash-out (rather than in-kind reimbursement) of these over-collected quantities. WIC said it sought this waiver so as to minimize delay in returning these quantities to customers and to extinguish the liability from WIC's books. WIC based the cash-out value of the over-collected quantities on the cash-out index price for the month the over/under collection occurred. WIC calculated the total amount due shippers at $452,112.00, which WIC offered to pay via an invoice credit.[5] Shippers who would have been the "beneficiaries" of this process vehemently protested and urged that WIC be required to follow its existing tariff procedures, which would have provided for an interim adjustment to the volumetric FL&U percentages, that is a return of gas in-kind, rather than a valuation of the gas and a dollar payment.

II. March 31, 2008 Order

5. The March 31, 2008 Order held that WIC had not shown good cause to justify a waiver of its tariff and denied WIC's request to cash-out over-collections from the period between September 1, 2007 and November 30, 2007. The order noted that WIC's shippers had a reasonable expectation that only in-kind adjustments would be utilized

[4] *Wyoming Interstate Company*, 121 FERC ¶ 61,213 (2007).

[5] WIC asserts that this method is consistent with its cash-out methodology in its 2007 Fuel Filing, which the Commission approved. *WIC*, 121 FERC ¶ 61,213 at P 14.

under WIC's existing tariff and that simply stating the existence of inevitable market fluctuations (such as here, where the price of gas is on an upward trend) did not rise to the level of good cause to support a request for waiver.

6. The March 31, 2008 Order also addressed WIC's argument that the Commission's allowing a cash payment adjustment in the 2007 Fuel Filing supports allowing a cash-payment adjustment here. Specifically, in the 2007 Fuel Filing, WIC proposed to cash-out a large quantity of gas that would have resulted in negative fuel and/or lost and unaccounted-for percentages, which are not permitted under the terms of WIC's tariff. Additionally, this quantity of gas included amounts that had been deferred from the previous year so as to avoid a negative FL&U percentage at that time. Thus, as noted in the March 31, 2008 Order, the cash-out allowed in the 2007 Fuel Filing returned over-collections in accord with the method prescribed by WIC's tariff for returning such over-collections, and there was no objection from any shipper as to the valuation of volumes involved in the cash adjustment.

7. The March 31, 2008 Order noted that in the case at hand, WIC appeared to selectively apply elements of its tariff, and its waiver request was strongly opposed by its customers as upsetting reasonable expectations. Thus, the March 31, 2008 Order found that WIC had not shown good cause for its waiver request, and therefore denied it.

III. WIC's Request for Rehearing

8. On rehearing, WIC argues that the Commission erred in finding that WIC's cash-out proposal would upset the operations of its tariff. WIC states that out-of-cycle filings are intended to refine fuel and/or lost and unaccounted for reimbursement percentages for known or anticipated operating changes on WIC's system. WIC further states that such filings were not intended to be the exclusive means by which WIC manages the return of unanticipated over-collections for a short-term period. WIC argues that because its tariff provides for submittal of out-of-cycle filings "at its election," such filings are not WIC's only method of returning its current over-collections.

9. WIC next argues that the Commission erred by finding that WIC's cash-out proposal would upset the reasonable expectations of its shippers that only in-kind adjustments would be used to account for over- or under-collections. WIC states that the March 31, 2008 Order mischaracterized its proposal to cash-out over-collections but require in-kind return of under-collections as a selective application of WIC's tariff. WIC responds by stating that it offered to perform a system-wide net aggregation of over- and under-collections where netting could be equally applied to all shippers. WIC further argues that although it has traditionally chosen to make in-kind reimbursements, there is no express prohibition in its tariff stating that such in-kind reimbursements are the only permissible mechanism to address over-collections. Moreover, WIC points to its cash-

out proposal in the 2007 Fuel Filing to show that any shipper expectations that in-kind reimbursements would be the exclusive reimbursement approach are unjustified and are not required by WIC's tariff.

10. WIC next argues that the Commission failed to address its argument that it would be inequitable for WIC to bear the burden of the cost of over-collections due to substantially increased gas prices. WIC asserts that, despite the March 31, 2008 Order's statement that market fluctuations are inevitable, its proposal is not the result of normal or routine price fluctuations. WIC asserts that the price change at issue here is approximately $5/Dth,[6] and therefore creates a unique price environment that more than supports its cash-out proposal. Moreover, WIC asserts that the Commission has found that fuel mechanisms are not intended to be profit/loss centers. WIC argues that its proposed cash-out value, using the cash-out index price for the month of the over- or under-collection, accurately reflects the value of the gas at the time of the over- or under-collection as the cash-out price is deemed to be the most accurate representation of market value at a given point in time.

IV. Discussion

11. We deny WIC's request for rehearing. Granting waiver of a pipeline's existing tariff is within the discretion of the Commission, and is not automatic. WIC points to nothing in its tariff that provides an alternative means of returning over-collected FL&U quantities to shippers. WIC describes its "intentions" as to the purpose of out-of-cycle filings.[7] However, WIC's tariff at the time of the subject order only allowed out-of-cycle filings to effectuate an in-kind adjustment to reimbursement percentages. To the extent such unsupported "intentions" exist outside of WIC's tariff, they are not relevant to a determination of whether WIC has shown good cause to support waiving its tariff to effectuate its proposed cash-out.

12. WIC highlights language in section 30.2 indicating that out-of-cycle FL&U re-computation filings may be made "at its election," seemingly to argue that such filings are one of any number of unspecified options at WIC's disposal for returning

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[6] WIC states that the value that shippers could have realized for the gas amounts at issue is approximately $2.10/Dth, whereas gas is currently valued at approximately $7/Dth.

[7] *See* Wyoming Interstate Co., Ltd., April 30, 2008 Rehearing Request at 4 (stating that out-of-cycle filings are intended to refine FL&U reimbursement percentages for known or anticipated operating changes, and they are not intended to be the exclusive means by which WIC manages unanticipated returns of over-collected FL&U for the short-term).

unanticipated over-collections. This language, however, refers to the filing or timing of an out-of-cycle FL&U re-computation; it does not mention cash-outs as another (extra-tariff) option that WIC could elect as a means of returning over-collected volumes, and that the Commission would be obligated to approve. Quite simply, WIC would not have filed a waiver request had its tariff permitted such a cash-out. Accordingly, we reject WIC's argument that practices not specifically prohibited by its tariff should somehow be anticipated by its customers, and therefore permitted without a showing of good cause.

13. With respect to the expectations of WIC's customers that any over-collections would be returned in kind through adjustments to WIC's reimbursement percentages, WIC argues that the Commission's granting of a waiver in the 2007 Fuel Filing would render such expectations unjustified. WIC misses the point. The circumstances were different with respect to the adjustment in the 2007 Fuel Filing, and WIC's customers should reasonably expect WIC to either follow the terms of its tariff (i.e., by making an out-of-cycle filing to adjust its reimbursement percentages) or provide good cause as to why it did not. WIC has done neither.

14. WIC attempts to show that good cause exists to grant it a waiver because it would otherwise bear the burden of returning gas that is more expensive than the gas it over-collected between September 1, 2007 and November 30, 2007. However, this volumetric method of tracking FL&U, as opposed to a value-based method, is precisely the method that was provided for in WIC's tariff. Thus, WIC essentially is arguing that it would be unjust and unreasonable for it to follow the terms of its tariff, which by virtue of their having been approved for inclusion into WIC's tariff are just and reasonable, until determined otherwise. As noted in the March 31, 2008 Order, market fluctuations are inevitable. For the time period at issue here, WIC had in place a volumetric tracker, designed to keep WIC volumetrically neutral.[8] Because this type of tracker is designed to keep WIC and its shippers volumetrically neutral, as opposed to economically neutral, it implicitly acknowledges that the gas over- or under-collected will not necessarily have the same value as the gas returned the following year, depending on the price of gas between the two points in time. Sometimes this may have benefited WIC, and sometimes this may have benefited shippers. Thus, merely alleging that the price of gas has gone up during the past few months does not rise to the level of good cause for a one-time waiver of its tariff. Accordingly, we reject WIC's argument that it would be inequitable to hold it to the terms of its tariff, and deny rehearing.

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[8] WIC recently proposed, and the Commission approved, a monetized cost/revenue true-up, which is designed to keep both WIC and its shippers economically neutral with respect to FL&U. *Wyoming Interstate Co., Ltd.*, 122 FERC ¶ 61,303 (2008).

<u>The Commission orders</u>:

WIC's request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.